

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 14 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0405-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
TERESA SOBOTA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20073299

Honorable Richard Fields, Judge

REVIEW GRANTED; RELIEF DENIED

Teresa Sobota

Tucson
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Pursuant to a plea agreement entered in May 2008, petitioner Teresa Jane Sobota was convicted of theft by misrepresentation, a class three felony. The trial court sentenced her to an aggravated prison term of seven years. Her trial attorney filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and an attorney

appointed for the post-conviction proceedings filed a petition stating he had reviewed the history of the case, avowing he saw no issues to raise, and requesting that Sobota be permitted to file a pro se petition, which she did. In that petition, Sobota contended the court had abused its discretion in sentencing her to an aggravated, rather than presumptive, prison term. She also raised related claims of ineffective assistance of counsel. The court denied relief without an evidentiary hearing, and this petition for review followed.

¶2 We will not disturb a trial court’s ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Similarly, we will not disturb a sentence that is within statutory limits absent a clear abuse of the trial court’s broad discretion to determine the appropriate sentence for a given defendant. *State v. Cazares*, 205 Ariz. 425, ¶ 6, 72 P.3d 355, 357 (App. 2003). Sobota has not sustained her burden on review of establishing the court abused its discretion either when it sentenced her initially or when it denied her request for post-conviction relief.

¶3 At sentencing, the trial court stated it had “considered in aggravation a long previous felony record, and the fact that the offense was carried out for pecuniary gain.” The court added that it had also “considered” in apparent mitigation but had given “little weight” to Sabota’s expression of remorse and that Sobota had turned herself into authorities. Weighing these factors, the court had found the aggravated prison term was warranted.

¶4 In her petition for post-conviction relief, Sobota contended the court had relied on aggravating circumstances “in error” and counsel had been ineffective in failing to challenge them. Specifically, she argued the court erred in considering certain felony convictions in determining she had an extensive criminal history and finding she had committed her offense for pecuniary gain, given the large discrepancy between what she claims the prosecutor initially had requested in restitution and the much smaller amount the court had ordered her to pay. Rejecting these claims, the court found it had “considered and weighed appropriate aggravating and mitigating circumstances,” and that Sobota “was legally and correctly sentenced to the aggravated term” of imprisonment. The court rejected the related claim of ineffective assistance of counsel.

¶5 On review Sobota essentially reiterates the claim of ineffective assistance of counsel she had raised in her pro se petition in the trial court. She insists that she at least had raised a colorable claim for relief entitling her to an evidentiary hearing. Sobota also contends “the prosecutor used aggravating factors at sentencing which were in error.” She has not sustained her burden of establishing the trial court abused its discretion when it summarily denied relief. And, because Sobota has not established the court relied on improper factors as aggravating circumstances, she necessarily has failed to raise a colorable claim of ineffective assistance of counsel. Counsel’s performance was neither deficient nor prejudicial. *See Strickland v. Washington*, 466 U.S. 668, 691-92 (1984). Further, contrary to Sobota’s assertion, there were no disputed issues of material fact either regarding the propriety of the factors the court had relied on or whether counsel had been ineffective for failing to challenge those factors. *See Ariz. R.*

Crim. P. 32.6(c) (summary disposition warranted in absence of “material issue of fact or law [that] would entitle the defendant to relief” under Rule 32).

¶6 The petition for review is granted, but for the reasons stated herein, we deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge